

Appl. No. 10/815,990  
Amdt. dated July 6, 2005  
Reply to Office action dated April 6, 2005

**Amendment to the Drawings:**

Attached is a replacement sheet for Figure 1. In Figure 1, previously omitted reference numeral 45 is added to identify the insulating member.

Also attached are two new sheets of drawings comprising Figures 2 and 3. These drawings show other embodiments of the invention.

### **REMARKS**

In response to the Office Action mailed April 6, 2005 Applicants amend this application and request reconsideration. In this amendment, no claims are cancelled or added. Accordingly, claims 1-8 are pending.

As a preliminary matter, Applicant requests that the references included in the Information Disclosure Statement filed November 9, 2004 be acknowledged as considered in the next Office Action.

### **Amendment to Specification**

New paragraphs [0009.1] and [0009.2] added after paragraph [0009] describe newly added Figures 2 and 3. Paragraph [0011] is amended to correct a typographical error. Paragraph [0013] is amended to reference newly added Figures 2 and 3 and to insert reference numerals 42, 43 and 44.

### **Claim Objections**

In the Office Action, claim 6 was objected to as containing informalities. Claim 6 is amended herein solely to address the informality.

### **Claim Amendments**

Claims 1 and 8 are amended and are now directed to a dishwasher safe digital thermometer in conformance with the title of the invention.

**Drawing Objections:**

The drawings were objected to under 37 C.F.R. § 1.83(a) as failing to show every feature of the invention specified in the claims. Figure 1 is amended to show insulating member 45. New Figure 2 is added to show high temperature glue 42. New Figure 3 is added to show gasket 44 and screw 43. Accordingly, the drawing objection is overcome.

**Rejections**

Claims 1-3 and 5-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee U.S. Patent Application Publication No. 20030169803 A1 (hereinafter Lee) in view of Mann et al., U.S. Patent No. 6,809,653 (hereinafter Mann), Couvertier, European Patent No. EP 03093029 A1 (hereinafter EP) and Paddock et al., U.S. Patent No. 4,404,813 (hereinafter Paddock). This rejection is respectfully traversed.

Applicant submits that the claim rejections should be withdrawn because neither Mann nor EP are valid references. Applicant further submits that the rejection of claims 1-3 and 5-8 should be withdrawn because the Office Action fails to establish a *prima facie* case of obviousness with respect to those claims. In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all of the claim limitations. The teaching or

suggestion to make the claimed combination and the reasonable expectation of success cannot be based on Applicant's disclosure. MPEP 2142. Here, the Office Action fails to establish an appropriate motivation to combine the references.

### **Summary of References**

Lee discloses an antibacterial thermometer used for measuring the temperature of food during the cooking process. The device disclosed in Lee includes a head portion 32 equipped with a display 39. Microprocessor 42 is associated with head portion 32. See Paragraph [0063].

Mann is directed to a telemetered characteristic monitor transmitter coupled to a sensor set that may be implanted in and/or through subcutaneous, dermal, sub-dermal, interperitoneal or peritoneal tissue, that transmits data from the sensor set to the characteristic monitor for determining body characteristics. Col. 3, lines 55-61. The purpose of the telemetered characteristic monitor system is to provide for better treatment and control in an outpatient or a home use environment. Col 5, lines 11-13. The monitor includes a housing 106 having an upper case 114 and a lower case 116 that are sealed with an ultrasonic weld. Col. 8, lines 34-49. Mann also teaches that the upper and lower cases may be snap fit, sealed with a silicone sealant, bonded together or mated with sealing rings.

The following recitation of the disclosure of EP is based upon its abstract. The patent is in French and only an English abstract was provided. EP is apparently directed to a regulator for motor vehicle alternators. The regulator includes a package 2

of insulating material within which a regulating circuit is embedded in epoxy resin. The package is made from molded polypropylene.

Paddock is directed to the field of refrigeration devices generally. More particularly, Paddock is directed to means for mounting and housing an electronic control device within the door of a refrigerator. Paddock is particularly concerned with the formation of condensation within the electronic control device due to the cold temperatures of the refrigerator. Hence, Paddock discloses a circuit means 48 including heat generating components 57 mounted on printed circuit board 49. As illustrated in Figure 4, the housing 21 for circuit means 48 includes an insulation block 46 that, together with front wall portions of housing 21 forms a heat retaining space 47. Heat generating components 57 heat the circuit board 49 and any components mounted thereon and provide heat to the air within heat retaining space 47. Foam insulation 58 is extended about insulation block 46 to provide additional sealing. This heating effect prevents occurrence of undesirable condensation within housing 21. See Column 3, lines 50 to the end of column 4.

### **Argument**

Neither Mann, nor EP are available as prior art references because each constitutes non-analogous art. In order to rely on a reference as a basis for a rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then reasonably pertinent to the particular problem with which the inventor was concerned.

With respect to EP, it is readily apparent that the field of applicant's endeavor is radically different from that of EP. The present invention is directed to digital thermometers that are dishwasher safe. EP is directed to the entirely unrelated field of regulators for alternators. There is simply no logical relation between the two fields and the office action does not attempt to establish one.

The Office Action does not show that EP is reasonably pertinent to the problem with which the present application is concerned. The present application concerns the problem of constructing a thermometer that can remain operational after passing through a dishwasher cycle and that is operational during the dishwasher cycle. The problem with which EP is concerned has not been established in the Office Action. Therefore, the Office Action cannot show that EP is analogous art.

With respect to Mann, it is readily apparent that the field of applicant's endeavor is radically different from that of Mann. Mann is directed to the field of telemetered subcutaneous sensor devices. There is simply no logical correlation between this field and the field of digital thermometers.

Mann is also not reasonably related to the problems addressed by the application. Mann addresses the problems of the inconvenience of wires connecting implantable sensors to monitors in the medical field. Col. 1, lines 53 to col. 2, line 12. In stark contrast, the present application addresses the problem of constructing a thermometer that can withstand a dishwasher cycle and operate in a dishwasher cycle.

Even if Mann and EP were analogous art, there is no motivation to combine Mann, EP, Paddock and Lee as proposed by the Office Action. Specifically, Applicant

respectfully submits that the Office Action is using impermissible hindsight in rejecting the claims. "It is impermissible to use the claimed invention as an instruction manual or template; to piece together the teachings of the prior art so that the claimed invention is rendered obvious. . . . 'One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'" *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992)(quoting *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988)). In this regard, the Office Action is using the Applicant's specification to combine the features of digital thermometers, telemetered characteristic monitor transmitters, automobile regulators and electronic controls for refrigerators.

The Office Action asserts that it would have been obvious to modify the device disclosed by Lee to have a housing sealed against leakage as taught by Mann, so as to protect the electronics from moisture and contaminants of a harsh environment. However, nothing in Lee, Mann or the prior art taken as a whole supports this asserted motivation. There is no disclosure in Lee suggesting that it be operated in a harsh or moisture filled environment. The Office Action offers no facts to demonstrate that a person of skill in the digital thermometer art would have looked to reference in the unrelated subcutaneous medical device art. Moreover, because Lee's probe is coated with an antibacterial coating, there is no need to subject the thermometer electronics to high temperatures as would be experienced in a dishwasher, for example. With the bacteria being killed by the coating, Lee's device may be cleaned by simply rinsing the probe and wiping off any excess foodstuff. Absent the teachings of Applicant's

disclosure, the skilled artisan would not have been motivated to apply a watertight seal to the housing of a digital thermometer disclosed.

The Office Action further asserts that it would have been obvious to a person of ordinary skill in the art to modify Lee's device so as to encapsulate the microprocessor in an epoxy potting compound as taught by EP, so as to protect the circuit from the effects of the environment. EP is directed to the wholly unrelated field of voltage regulators. EP suggests nothing of the desirability of insulating and water proofing temperature conversion logic of digital thermometers. The Office Action offers no facts to illustrate that a person having ordinary skill in the digital thermometer art would look to the alternator art in designing a thermometer for operation in a dishwasher. It seems that the motivation asserted in the Office Action may be directly traced to Applicant's disclosure.

The Office Action utterly fails to identify any motivation for applying the insulating foam of Paddock to Lee's device. Paddock is concerned with retaining heat generated by control circuitry within a housing to create a temperature gradient with cold ambient temperatures to prevent condensation within the housing. Paddock is designed as such because it is intended for use in refrigerators. Unlike Paddock, Lee is not primarily intended for use in refrigerators. Hence, again, absent Applicant's disclosure, the skilled artisan would not have been motivated to modify the Lee device as proposed in the Office Action.



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Claim 4 was rejected under 35 U.S.C. § 103(a) as unpatentable over Lee, Mann, EP and Paddock as applied to claims 1-3 and 5-8 and further in view of Jones, Jr., U.S. Patent No. 3,138,776 (hereinafter Jones). This rejection is respectfully traversed.

As detailed above, neither Mann, nor EP is analogous art. As such, they may not be relied upon as a basis for rejection. Even if they were analogous art, as shown above, there is no motivation to combine those references as proposed in the Office Action. Accordingly, the rejection of claim 4 must be withdrawn.

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In view of the foregoing, it is asserted that the application is in condition for allowance. Reconsideration of the rejection and a favorable action on the merits are respectfully requested.

Respectfully submitted,

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